

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

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**Commonwealth Edison Company**

**Annual formula rate update and  
revenue requirement reconciliation  
under Section 16-108.5 of the Public  
Utilities Act.**

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**Docket No. 13-0318**

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**STAFF OF THE ILLINOIS COMMERCE COMMISSION**

**REPLY BRIEF ON EXCEPTIONS**

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JESSICA L. CARDONI  
JOHN C. FEELEY  
KELLY A. TURNER  
Office of General Counsel  
Illinois Commerce Commission  
160 North LaSalle Street, Suite C-800  
Chicago, IL 60601  
Phone: (312) 793-2877  
Fax: (312) 793-1556  
jcardoni@icc.illinois.gov  
jfeeley@icc.illinois.gov  
kturner@icc.illinois.gov

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*Counsel for the Staff of the  
Illinois Commerce Commission*

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**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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<b>Annual formula rate update and</b>	:	<b>Docket No. 13-0318</b>
<b>revenue requirement reconciliation</b>	:	
<b>under Section 16-108.5 of the Public</b>	:	
<b>Utilities Act.</b>	:	

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**STAFF OF THE ILLINOIS COMMERCE COMMISSION  
REPLY BRIEF ON EXCEPTIONS**

Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to the direction of the Administrative Law Judges (“ALJs”) and Section 200.800 of the Illinois Administrative Code, respectfully submits its Reply Brief on Exceptions (“RBOE”) to the briefs on exceptions (“BOE”) filed by: Commonwealth Edison Company (“ComEd”); the People of the State of Illinois by Attorney General Lisa Madigan (“AG”); and jointly by the Illinois Industrial Energy Consumers (“IIEC”), the City of Chicago (“City”), and the Citizens Utility Board (“CUB”) (jointly “IIEC/City/CUB”), which were filed on November 22, 2013 in response to the Administrative Law Judges Proposed Order (“ALJPO”) issued November 15, 2013 in the above-captioned matter. Staff’s failure to address other positions or arguments that were contained in those BOEs should not be construed as agreement with those positions or arguments.

**I. INTRODUCTION / STATEMENT OF THE CASE**

**II. OVERALL REVENUE REQUIREMENT**

- A. 2014 Initial Rate Year Revenue Requirement
- B. 2012 Reconciliation Adjustment
- C. ROE Collar
- D. 2014 Net Rate Year Revenue Requirement

**III. SCOPE OF PROCEEDING**

The Company's proposed changes (Exception No. 1) to this section should be rejected except for the two sentences addressing the original cost determination discussed below. The Company misinterprets the ALJPO's discussion of the scope of this proceeding. The Company incorrectly assumes that the ALJPO's conclusion regarding cash working capital ("CWC") is inconsistent with the ALJPO scope of proceeding. (ComEd BOE, 3.)

As Staff explains in its BOE, the first sentence of the second paragraph of this section in the ALJPO should be stricken. Striking the first sentence of the second paragraph clarifies the ALJPO determination that CWC is not an issue to be considered in a separate Section 9-201 proceeding. (Staff BOE, 2-3.)

**Original Cost**

The Company's proposes, as part of Exception No. 1, to add a statement on the original cost finding. (ComEd BOE, 4; ComEd Exceptions to the Proposed Order, 5.)

Staff agrees with the two sentences as proposed by the Company in Exception No. 1 that relate to original cost only.

#### **IV. RATE BASE**

##### **A. Overview**

1. 2012 Reconciliation Rate Base
2. 2014 Initial Rate Year Rate Base

##### **B. Potentially Uncontested Issues**

1. Plant in Service
  - a. Distribution Plant
  - b. General and Intangible Plant
  - c. Functionalization / Use of W&S Allocator
  - d. Plant Additions
2. Materials & Supplies
3. Construction Work In Progress
4. Regulatory Assets and Liabilities
5. Deferred Debits
6. Other Deferred Charges
7. Accumulated Provisions for Depreciation and Amortization
8. Accumulated Miscellaneous Operating Provisions
9. Asset Retirement Obligation
10. Customer Advances
11. Customer Deposits

##### **C. Potentially Contested Issues**

1. Accumulated Deferred Income Taxes (ADIT) Adjustment on Vacation Pay



The AG's Exception No. 1 and CCI's Exception No. 2 to remove from rate base the deferred tax asset associated with capitalized accrued vacation pay should be rejected. The AG and CCI contend that the deferred tax asset associated with capitalized accrued vacation pay does not represent actual investor-supplied funds and that netting capitalized accrued vacation pay against operating reserves somehow changes the nature of the related deferred tax asset. (AG BOE, 4-5; CCI BOE, 9-12.) The capitalized accrued vacation is included in income for tax purposes but not included in book income. This difference causes the Company's tax payable to be greater than its book income tax expense and creates a deferred tax asset. (Staff RB, 6.) Netting the capitalized accrued vacation pay against the operating reserve changes the presentation of the data, but does not change the fact that, in relation to accrued vacation pay, a deferred tax asset exists. (Staff RB, 7.) Accordingly, the AG's Exception No. 1 and CCI's Exception No. 2 should be rejected.

## 2. Cash Working Capital

The record evidence reflects Staff's position on this matter in its direct and rebuttal testimony is consistently this: For the revenue requirements for the filing year<sup>1</sup> (FY) and reconciliation year<sup>2</sup> (RY) to be representative of their respective years, it is necessary for each to be based on the CWC calculations that are representative of the costs and revenues associated with each revenue requirement. In other words, the FY

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<sup>1</sup> Filing year refers to the year the "new charges [ ] take effect beginning on the first billing day of the following January billing period and remain in effect through the last billing day of the next December billing period ..." 220 ILCS 5/16-108.5(d)(2). In this proceeding the FY at issue is Calendar year 2014.

<sup>2</sup> Reconciliation year is the "reconciliation of the revenue requirement that was in effect for the prior rate year (as set by the cost inputs for the prior rate year). 220 ILCS 5/16-108.5(d)(1). The RY or prior year at issue in this proceeding is calendar year 2012.

revenue requirement should have a cash working capital (CWC) based on the FY, and the RY revenue requirement should have a CWC based on the RY. (Staff Ex. 1.0C, 7-9; Staff Ex. 8.0, 5-8.)

In its IB, Staff noted that ComEd's opposition to this otherwise straightforward matter is that it believes the law precludes the Commission from making an adjustment that would require a change to a supporting schedule which ComEd believes is part of the "structures and protocols of the performance-based formula rate" as used in Section 16-108.5(d) of the Act. (Staff IB, 15.) It was also noted, however, that in the ongoing Ameren cases Docket Nos. 13-0501 and 13-0517 consolidated, Staff disagrees with that interpretation and has sought a Commission determination of the meaning of the phrase "structures and protocols of the performance-based formula rate" as used in Section 16-108.5(d) of the Act. Staff is requesting the Commission determine whether Commission-approved adjustments that would cause a change to the formula rate schedules, appendices and work papers that support the two schedules in the filed formula rate tariff but are not themselves within such tariff could be properly made within the context of a formula rate proceeding. Staff explained that in the Ameren case, Staff asserted Ameren's position (which is similar to ComEd's position in this docket) would unreasonably limit the Commission's ability within each formula rate proceeding to make the necessary adjustments the Commission finds necessary to ensure the resulting rates are prudent, just, and reasonable as required under Sec. 16-108.5(c):

The Commission shall enter an order approving, or approving as modified, the performance-based formula rate, including the initial rates, as just and reasonable within 270 days after the date on which the tariff was filed... Such review shall be based on the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility,

the Commission applies in a hearing to review a filing for a general increase in rates under Article IX of this Act. (Staff IB, 6-7.)

Since the same issue of whether the proposed adjustment to CWC is a change to the “structures and protocols of the performance-based formula rate” as used in Section 16-108.5(d) of the Act is before the Commission in the Ameren proceeding, Docket Nos. 13-0501 and 13-0517 consolidated, Staff notes that the Commission’s decision here should be made consistent with its Order in Docket Nos. 13-0501 and 13-0517 consolidated, where applicable.

On November 26, 2013, the Commission entered an Interim Order in Docket Nos. 13-0501 and 13-0517 (cons.), approving the use of two cash working capital calculations, as proposed by Staff. Staff’s cash working capital proposal in those dockets in substance mirrors the same recommendations of Staff witness Kahle in this proceeding. Based on the evidence in this record and consistent with its decision in Docket Nos. 13-0501 and 13-0517 (cons.), the Commission should similarly rule in this docket that two CWC calculations are required in formula rates so as to maintain consistency. Therefore, the Company’s proposed changes (Exception No. 2) to this section should be rejected with the exception of the first sentence of Exception No. 2 discussed below.

Staff notes that the Company’s proposed changes (Exception No. 2) includes language directing Staff and the Company to meet regarding this issue and discusses Staff requesting an investigation under Section 9-250 of the Act. This language would be applicable only if the Commission modified the ALJPO and found that the FY and RY revenue requirements resulting from this proceeding should be based on the same CWC calculation and that the FY and RY revenue requirements in prospective

proceedings should be based on different CWC calculations. (ComEd BOE, Exceptions to the Proposed Order, 19.) Therefore, assuming the Commission's final order is consistent with the ALJPO, ComEd's proposed Exception No. 2 is moot and Exception No. 2 should be rejected with the exception of the first sentence of Exception No. 2.

The Company's proposed changes in Exception No. 2 include adding a statement to the Commission Analysis and Conclusion Section stating that the final approved cash working capital figure in rate base should reflect the leads and lags approved by the Commission in Docket No. 11-0721. Staff agrees with the addition of the first sentence of Exception No. 2. (ComEd BOE, Exceptions to the Proposed Order, 19.)

3. Other (including derivative adjustments)

**V. OPERATING EXPENSES**

A. Overview

ComEd suggests Exception No. 3 which changes the ALJPO total operating expenses advocated by Staff from the \$1,851,001,000 after-tax amount set forth in Staff's Initial Brief, Appendix A, to the before-tax amount of \$1,676,586,000 also set forth in Appendix A to Staff's Initial Brief. (ALJPO, 21.) ComEd states that such a change allows for a proper "apples to apples" comparison between the Staff and ComEd amounts. (ComEd BOE, 8-9.) Staff does not object to ComEd Exception No. 3.

B. Potentially Uncontested Issues

1. Distribution O&M Expenses
2. Customer-Related O&M Expenses
3. Administrative and General Expense
4. Charitable Contributions

5. Chicago Forward Sponsorship
6. Outside Services Employed
7. Transmission Legal Fees

ComEd in its Exception No. 4 points out that in the ALJPO, the paragraph that appears under “Transmission Legal Fees” appears to be a typographical error as it reproduces the paragraph above it, related to “Outside Services Employed.” (ComEd BOE, 9.) The Company has proposed Exception No. 4 to correct this error by deleting the paragraph and inserting a new paragraph accurately reflecting the agreed adjustment relating to Transmission Legal Fees. Staff agrees with the Company’s proposed change.

8. 2012 Merger Expense
9. Uncollectibles Expenses
10. Advertising Expenses
11. Sales and Marketing Expense
12. Depreciation and Amortization Expense
13. Regulatory Asset Amortization
14. Operating Cost Management Efforts
15. Storm Damage Repair Expense
16. Interest Expense
17. Lobbying Expense
18. Gross Revenue Conversion Factor

C. Potentially Contested Issues

1. Rate Case Expenses

As noted in Staff's Brief on Exceptions, the ALJPO did not explicitly state the Commission finding on rate case expense required by Section 9-229 of the Public Utilities Act, 220 ILCS 5/9-229. To correct this oversight, Staff recommended inclusion of Findings & Ordering paragraph which specifically assesses rate case expense. (Staff BOE, 41-42.) In Exception No. 5 of its BOE, ComEd also notes absence of the Section 9-229 finding in the body of the ALJPO itself. (ComEd BOE, 9.) Staff maintains that its language in Staff's BOE be adopted. Additionally, Staff does not object to the majority of ComEd's replacement language to the body of the order; however, the replacement language suggested by ComEd omits any reference to adjustments adopted by the ALJPO. As such, the ComEd replacement language should not be adopted without change. If the Commission uses ComEd's language, then Staff suggests minor edits to the ComEd replacement language to remove unnecessary detail and to state that the amount approved by the Commission is not that requested by the Company; rather, the amount approved includes Commission adjustments. Those minor edits appear in strikethrough and double underline, below.

**Proposed Modification**

(ComEd Exceptions to the Proposed Order, 27.)

Based on the evidentiary record, which includes approximately 1300 pages of supporting documentation including, but not limited to, invoices, certain data requests responses, time entries as well as direct, rebuttal and surrebuttal written testimony and live testimony, the Commission concludes that ComEd's rate case expenses incurred in 2012 for ComEd's 2011 and 2012 rate cases (Docket Nos. 11-0721 and 12-0321, respectively) and ComEd's rate case expenses incurred in 2012 for Docket Nos. 07-0566 and 10-0467, adjusted as described in detail below, are just and reasonable pursuant to Section 9-229 and the requirements

stated in *Madigan v. Illinois Commerce Comm'n*, 2011 IL App (1st) 101776 ¶ 51 (2012). Specifically, we find that the evidentiary record sufficiently presents (1) the services performed by ComEd's outside counsel and experts in connection to the rate case expenses incurred; (2) by whom those services were performed; (3) the time expended providing the services; (4) and the amounts charged for those services. Moreover, we find that the evidence shows that the amount of rate case expense incurred, and which ComEd seeks to recover adjusted as described in detail below, is just and reasonable in light of the skill of the attorneys and experts involved, the complexity of the issues presented in rate cases and the customary charges and market rates for such services. Commission findings relating to specific aspects of ComEd's rate case expenses are discussed in detail below.

- a. Appeal & Remand
- b. Attorneys
- c. Experts
- d. Other
  - i. SFIO Consulting

The ALJPO correctly concludes that \$42,383 of SFIO costs ComEd incurred as rate case expense should be excluded from the revenue requirement. (ALJPO, 33.) ComEd takes exception to the ALJPO's well-reasoned conclusion and states that the SFIO costs incurred as rate case expense are recoverable for the reasons stated in its Initial and Reply Briefs. (ComEd BOE, 10.) The Company's Initial brief and Reply brief arguments are no more persuasive now than when originally considered and rejected by the ALJPO. The record shows that the SFIO costs in question are not reasonable for recovery from ratepayers. (Staff IB, 35-36.) Further, in the face of Staff testimony to the contrary, ComEd failed to show how the services at issue were not duplicative or redundant to those provided by ComEd attorneys or ComEd personnel. Accordingly, ComEd's Exception No. 6 on this issue should also be rejected.

- ii. Westlaw/Lexis Research
  - iii. Attorney General Position
2. Incentive Compensation Program Expenses
- a. Long-Term Performance Share Awards Program (“LTPSAP”)

The ALJPO correctly concludes that LTPSAP costs are not recoverable in their entirety. (ALJPO, 43.) As noted by the ALJPO, the LTPSAP is based on operational and financial performance of all subsidiaries of Exelon, and the award grants are dependent on a management committee’s subjective assessment of the performance of all Exelon subsidiaries. Further, there are no direct payout percentages assigned to any of the goals. Id. Finally, the Total Shareholder Return (“TRS”) feature of the LTPSAP plan could have a positive or negative impact on the overall LTPSAP payout decision. Because the TSR component is depending on or akin to net income or an affiliate’s (Exelon’s) earnings per share (“EPS”), it is improper to allow recovery of incentive compensation that is based in any way on that TSR. (Staff IB, 39.) The TSR feature alone is reason enough to disallow recovery of LTPSAP.

ComEd argues that the Appellate Court, the Commission, and ComEd agree that once ComEd has identified recoverable cost items, then the Commission cannot treat them as zero. ComEd also claims that a portion of its LTPSAP expenses is an identified recoverable cost item. (ComEd BOE, 10-11.) However, this argument fails to consider the impact of the TSR on the identified costs, the impact of the management committee’s subjected assessment of performance on the identified costs, and lack of direct payout percentages assigned to the LTPSAP goals. If the LTPSAP metrics were not impacted by these other extraneous factors, some of the associated costs could



arguably be considered recoverable under the Act. However, as correctly noted by the ALJPO, the arbitrary nature of these extraneous factors renders the LTPSAP costs unrecoverable in total. (ALJPO, 43.) Accordingly, ComEd Exception No. 7 should be rejected.

b. Energy Efficiency/Rider EDA

In Exception No. 8, ComEd argues that the ALJPO improperly disallows AIP expenses associated with energy efficiency (“EE”) employees for the years 2009-2011 because: (1) the ALJPO misinterprets the rulings of the Commission in prior rate cases regarding regulatory assets; and (2) the ALJPO’s conclusion results in ComEd being unable to recover costs the Commission has found to be just and reasonable. (ComEd BOE, 13.) The Commission should reject both of these arguments.

First, the Company argues that prior to EIMA, there was no requirement for the Commission to pre-approve the creation of a regulatory asset. However, according to the Uniform System of Accounts, Regulatory Assets and Liabilities are assets and liabilities that result from rate actions of regulatory agencies.” (USOA Definition 31.) The Company is unable to provide any Commission Order or statutory authority for establishing a regulatory asset for out of period EE incentive compensation costs to be recovered in the current proceeding. (Staff RB, 20.) The Company’s discussion of how prior, appropriate regulatory assets were established (ComEd BOE, 13-14) does not create approval for the unauthorized pre-2012 costs here.

Secondly, and more importantly, the Company has misinterpreted the Commissions rulings in Docket No. 10-0570, a proceeding to establish a three-year energy efficiency plan, and Docket No. 10-0537, an energy efficiency rider reconciliation

proceeding. The Commission previously determined in Docket No. 10-0570 that the AIP expenses associated with EE employees are an *unrecoverable* expense. (Staff RB, 19.) In its Order in Docket No. 10-0570, the Commission, consistent with its long standing practice regarding incentive compensation cost recovery, directed the Company to make a showing in its next EE Rider reconciliation proceeding how the AIP the Company seeks to recover for the EE employees are beneficial to ratepayers:

Ideally, EE employees should have their incentive compensation based on something more tangibly related to EE.

Thus, in ComEd's next reconciliation filing it should show how its current incentive compensation relates to EE or how it has tailored its incentive compensation for these employees. Naturally, the reasonableness and prudence must also be shown. In the subsequent annual reconciliations, the relationship of the incentive compensation program to EE will not need to be addressed and just the reasonableness and prudence will have to be shown.

Commonwealth Edison Co., ICC Order Docket No. 10-0570, 44 (December 21, 2010).

Clearly, the Commission envisioned the EE incentive compensation costs to be considered for recovery in the annual Rider reconciliations. In ComEd's subsequent reconciliation proceeding, Docket No. 10-0537, the Company failed to meet the Commission's long established practice of showing how the AIP for the EE employees benefited ratepayers. The Final Order stated, in part:

... Stated another way, ninety-eight percent of incentive compensation paid to incremental energy efficiency employees has nothing to do with energy efficiency.

As a result, the efforts of the incremental EE employees have very little to do with the incentive compensation which the Company seeks to recover from ratepayers through Rider EDA.

Commonwealth Edison Co., ICC Order Docket No. 10-0537, 24-25 (October 17, 2012) (ref. omitted). Contrary to what the Company has claimed, these costs have not been determined to be just and reasonable but have, in fact, been disallowed for recovery because the Company has failed to meet the longstanding Commission requirement of showing a benefit to ratepayers to recover incentive compensation. These costs are not “trapped costs” as the Company suggests but rather unrecoverable costs.

3. Employee Stock Purchase Plan (“ESPP”)

The Commission should reject the AG’s Exception No. 2. (AG BOE, 10-15.) The ALJPO correctly concludes that both the A&G expenses and the income tax expenses arising from ComEd’s ESPP are recoverable in their entirety. (ALJPO, 54-55.) The expenses in question are in relation to an employee benefit, not an incentive compensation plan, and reasonable and prudent costs incurred for that plan during 2012 – whether A&G costs or income tax costs – are recoverable in formula rates. (Staff IB, 41-42.)

Although Staff did not promulgate discovery to ComEd regarding ESPP, the AG did. Staff analyzed the exact same discovery responses that ComEd provided to the AG and analyzed the exact same evidence available to all parties. While Staff did not provide workpapers in support of its analysis of the issue, Staff did in fact perform the analysis and provide testimony summarizing its findings on ESPP in the rebuttal testimony of Mr. Bridal. (Staff Ex. 7.0, 8.03-827). AG Cross Exhibit 6, a copy of Staff’s response to an AG data request, provides further details regarding Staff’s ESPP analysis. The AG’s Exception No. 2 should be rejected.

- a. Stock Price Issue
  - b. Income Tax Issue
4. Payroll taxes

The ALJPO correctly concludes that payroll taxes associated with disallowed or excluded incentive compensation are not reasonable for recovery from ratepayers. The payroll taxes in question would not have been incurred if not for the associated incentive compensation; thus, the associated payroll taxes should be provided equal treatment and excluded from the revenue requirement like the incentive compensation costs that gave rise to those payroll taxes. (ALJPO, 57.) ComEd's attempt to argue otherwise is transparently faulty. To exclude incentive compensation costs from the revenue requirement determination but not also exclude derivative payroll taxes which would not even exist in the absence of that incentive compensation defies logic. ComEd's suggestion in its Exception No. 9 to do so should be rejected. (ComEd BOE, 15.)

5. Pension Costs

The ALJPO correctly concludes that pension costs associated with disallowed or excluded incentive compensation are not reasonable for recovery from ratepayers. The pension costs in question would not have been incurred if not for the associated incentive compensation; thus, the associated pension costs should be provided equal treatment and excluded from the revenue requirement like the incentive compensation costs that gave rise to the pension cost. (ALJPO, 57.) Similar to the payroll taxes discussed in Section V.C.4 above, any attempt to argue otherwise is incorrect. To exclude incentive compensation costs from the revenue requirement determination but not also exclude derivative pension costs which would not even exist in the absence

that incentive compensation is nonsensical. ComEd's suggestion in Exception No. 10 to do so should be rejected. (ComEd BOE, 15.)

Further, contrary to ComEd's replacement language, the record shows that while the actuarial study used to determine pension expense for 2012 may have assumed 100% payout of AIP in 2012 and only AIP paid out over 102.9% is disallowed, there was AIP that was excluded in 2012 for which derivative pension expense also should not be recovered. (Staff IB, 23-24.) For example, the Company itself excluded some AIP from recovery before application of the 102.9% disallowance threshold. Id. In addition, the actuarial study used to determine pension expense for 2012 was impacted by adjustments necessary to reflect disallowances from the prior year. Id. at 23.

Finally, any suggestion that Staff's calculation of its adjustment is improper is misguided. First, it would be inherently illogical to allow recovery of pension costs for which the incentive compensation costs from which the pension costs were derived are not being recovered. The need for an adjustment is apparent. Staff's adjustment amount is the only adjustment amount in the record, despite Staff's request that the Company provide its own adjustment determination. (Staff RB, 24.) Even so, ComEd stated that Staff's adjustment now "likely mitigate[s] the chance that ComEd is denied recovery of pension costs based on an assumption that disallowed incentive compensation that ultimately is not factored into the highest average annual pay (HAAP)." (Staff Cross Ex. 1, 1.)

## **VI. Rate of Return**

- A. Overview
- B. Capital Structure

- C. Cost of Capital Components
  - 1. Cost of Short-term Debt
  - 2. Cost of Long-term Debt
  - 3. Rate of Return on Common Equity

## **VII. RECONCILIATION**

- A. Overview
- B. Potential contested Issues
  - 1. Deferred Income Taxes on Reconciliation Balance
  - 2. WACC Gross-Up

## **VIII. ROE COLLAR**

- A. Overview
- B. Potential contested Issues
  - 1. Rate Base for ROE Collar Calculation

## **IX. REVENUES**

- A. Overview

ComEd suggests Exception No. 11 to ALJPO page 62 which would include in the ALJPO ComEd's recommended 2014 Rate Year total revenues before subtraction of Other Revenues and before application of the 2012 reconciliation adjustment and the ROE Collar adjustment. ComEd also suggests language to clarify that the Staff 2014 Rate Year total revenue amount set forth in the ALJPO is also before subtraction of Other Revenues and before application of the 2012 reconciliation adjustment and the ROE Collar adjustment. (ComEd BOE, 16.) Staff does not object to ComEd's Exception No. 11.

- B. Potentially Uncontested Issues
  - 1. Allocation of PORCB LPCs to Delivery Services
  - 2. Other Revenues
- C. Potentially Contested Issues
  - 1. Late Payment Revenues related to Transmission
  - 2. Billing Determinants

The Commission should reject ComEd's proposed revisions to the ALJPO regarding billing determinants. ComEd continues to oppose the proposals by Staff and the AG to adjust the customer billing determinants associated with New Business plant for 2013 that the Company has included in rate base. (ComEd BOE, 16-22.) The Company argues that new evidence provided in this case supports a different outcome than prior rulings. Id. at 22. However, for the most part, ComEd recycles arguments it previously made and asserts that the Commission ruled incorrectly in the prior cases. ComEd offers what it claims are four reasons that the position adopted by the Commission in the prior formula rate cases is incorrect. Id. at 19-20. Staff will not restate the Company's four arguments here. However, Staff specifically addressed these arguments in its direct testimony. (Staff Ex. 5.0, 6-8:124-173.) Staff's position has been consistent throughout this entire proceeding. Staff proposed an adjustment to customer billing units associated with New Business plant. The Company did not provide a persuasive argument as to why the same adjustment ordered in the previous two rate formula cases and the conclusion in this ALJPO should be ignored this time. (Staff RB, 29.) Staff recommended that the Commission continue to make an adjustment to customer billing determinants associated with New Business plant and that the methodology used should be an adjustment to customer billing determinants

only. Staff explained that this is the same methodology approved by the Commission in ComEd's last two formula rate cases Docket Nos. 11-0721 and 12-0321. Id. The Company has provided no additional information in this proceeding to justify a change in the methodology already approved by the Commission, nor any evidence to warrant any other adjustment to sales billing determinants. Id. Staff's proposed adjustments to billing determinants are appropriately based upon previous Commission Orders in Docket Nos. 11-0721 and 12-0321 and apply the conclusions in those cases to the facts in this case. The Commission made billing determinant adjustments in Docket Nos. 11-0721 and 12-0321 because the Company included New Business plant. Id. at 29-30. In fact, in Docket No. 12-0321 the Commission stated:

The Commission also rejects ComEd's assertion that the adjustment to reflect New Business billing determinants has no bearing outside of Docket 11-0721. The Commission agrees with Staff's argument that the issues in the two dockets are similar, wherein ComEd has included in its proposed revenue requirement estimated distribution plant addition for New Business. As such, it is appropriate in this proceeding to adjust the customer count portion due to the inclusion of plant to serve New Business in 2012 in the revenue requirement. By applying this adjustment, the billing determinants will more accurately match the number of customers that are served by plant additions and customer growth, otherwise the rate per customer will be too high.

Commonwealth Edison Co., ICC Order Docket No. 12-0321, 28-29, (December 19, 2012) (emphasis added).

ComEd also restates its position that EIMA specifically addresses billing determinants, requiring the Commission to implement rate formulae and protocols that provide for use of "historical weather normalized billing determinants." 220 ILCS 5/16-108.5(c)(4); 5/16-108.5(c)(4)(H). ComEd argues that Staff's and the AG's proposals,



which were approved by the Commission's prior orders, violate EIMA. (ComEd RBOE, 18.) Despite ComEd's arguments to the contrary, the Commission's prior orders did not violate Section 16-108.5(c)(4) and (4)(H).

Section 16-108.5(c), in pertinent part provides as follows:

The performance-based formula rate approved by the Commission shall do the following:

Provide for the recovery of the utility's actual costs of delivery services that are prudently incurred and reasonable in amount consistent with Commission practice and law. \* \* \*

\* \* \*

(4) Permit and set forth protocols, subject to a determination of prudence and reasonableness consistent with Commission practice and law, for the following:

\* \* \*

(H) ) historical weather normalized billing determinants;

220 ILCS 5/16-108.5(c)(4)(H). Consistent with the Commission's prior orders, Staff used the Company's historical weather normalized billing determinants. Despite ComEd's arguments to the contrary, the Act does not remove discretion from the Commission or reverse the Commission's usual practice of ordering ComEd to make adjustments to take account of projected plant additions to end of period rate base. The Act is clear that the Commission retains all of its traditional Article IX ratemaking powers and discretion. Section 16-108.5(c) expressly provides that after ComEd filed its formula rate structure and protocols and its initial rates, the Commission "shall enter an order approving or approving as modified," ComEd's formula rate, including initial rates, "as just and reasonable." 220 ILCS 5/16-108.5(c). In doing so, the Commission's "review shall be based on the same evidentiary standards, including, but not limited to, those

concerning the prudence and reasonableness of the costs incurred by the utility, the Commission applies in a hearing to review a filing for a general increase in rates under Article IX of [the Public Utilities Act].” Id. The Commission’s prior determination to match ComEd’s projected new plant additions to the effect that those projected new business plan additions have on billing determinants to ensure that ComEd’s formula rate would not allow it to recover more than “the utility’s actual cost of delivery services” fits clearly within the Commission’s Article IX broad ratemaking authority to establish just and reasonable rates. Staff’s actions in this proceeding are consistent with that past Commission practice.

Finally, to leave no doubt that the legislature through the general instruction intended that the Commission draw upon all of its broad ratemaking powers, the statute expressly provides in no fewer than three places that the Commission is to specifically determine that various components of the approved formula rate be prudent, reasonable, and “consistent with Commission practice and law[,]” including in Section 16-108.5(c)(4)(H) itself. Id.; Section 16-108.5(c)(1), (2), (4). Thus, nothing in this subsection removes the Commission’s discretion or prohibits the Commission from making ComEd to make adjustments to billing determinants, “historical weather normalized billing determinants,” or any type of billing determinant that is reasonable, prudent and consistent with Commission practice and law. ComEd’s position ignores the plain language of the Act and impermissibly inserts a limitation into the statute. See *generally* Western Nat’l Bank of Cicero v. Village of Kildeer, 19 Ill. 2d 342, 349-50 (1960).

Accordingly, the Commission should accept Staff's and the AG's proposed adjustment as accepted in the ALJPO. (ALJPO, 78.) Adoption of the language in the ALJPO will increase the customer billing determinants associated with New Business plant for 2013 that the Company has included in rate base. In doing so, the Commission would be using the same methodology it approved in ComEd's last two formula rate cases, Docket Nos. 11-0721 and 12-0321. (Staff RB, 58.)

## **X. COST OF SERVICE AND RATE DESIGN**

- A. Overview
- B. Potentially Uncontested Issues
  - 1. Embedded Cost of Service Study
  - 2. Distribution System Loss Factor Study
  - 3. Rider PE – Purchased Electricity

In its Exception No. 13 ComEd proposes an exception to the language of the ALJPO to address Rider PE as well as Rate BESH. (ComEd BOE, 22.) This remains an uncontested issue and Staff agrees with the Company's Exception No. 13.

## **XI. OTHER**

- A. Overview
- B. Potentially Uncontested Issues
  - 1. Staff Investigation into BSC
  - 2. Reporting Requirements
    - a. EIMA Investments
    - b. Reconciliation Year Plant Additions

c. Contributions to energy low-income and support programs

C. Potentially Contested Issues

1. Use of Rate Formula Template / Traditional Schedules for  
Analysis of Adjustments / Disallowances

The ALJPO correctly concludes that the traditional schedules create the necessary transparency for formula rate proceedings by showing all of the adjustments made by the parties, the ALJs, and the Commission. (ALJPO, 86.) The traditional schedules set forth in an obvious and straight-forward manner the revenue requirement components being requested by the utility, the various parties' adjustments to those revenue requirement components, and the adjusted revenue requirement components and overall revenue requirement approved by the Commission. ComEd's formula rate schedules do not. ComEd's addition of a spreadsheet which summarizes changes to its formula rate schedule inputs also does not offer the simple clarity and familiar presentation provided by the traditional revenue requirement schedules. Finally, this issue was previously litigated in Docket No. 12-0321, and there are no new facts which provide adequate reason to depart from past Commission practice. (Staff IB, 69.) ComEd's exception No. 14 in this matter should be rejected. (ComEd BOE, 22-24.)

## **XII. FINDINGS AND ORDERING PARAGRAPHS**

ComEd Exception No. 15 suggests multiple revisions to Finding paragraphs (4), (6), and (8), and suggests that these paragraphs in addition to the Appendices to the Order be modified in accordance with ComEd's other exceptions. (ComEd BOE, 24.) Staff opposes the specific amounts set forth by ComEd in this exception. However, Staff supports the intended purpose of this exception, and recommends that Finding

paragraphs (4), (6), and (8), and the Appendices to the final order should all be updated and modified to reflect the adjustments adopted by the Order.

### **XIII. TYPOGRAPHICAL ERRORS**

ComEd in its Exception No. 16 states that term “rate base” as it appears in the last sentence of the first full paragraph on page 3 of the ALJPO should be changed to the term “revenue requirement.” (ComEd BOE, 25.) Staff agrees that the suggested change is appropriate.

### **XIV. CONCLUSION**

**WHEREFORE**, for each of the following reasons, Staff respectfully requests that the Commission’s order in this proceeding reflect all of Staff’s recommendations regarding the Company’s tariffs and charges submitted pursuant to Section 16-108.5 of the Public Utilities Act.

Respectfully submitted,

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JESSICA L. CARDONI  
JOHN C. FEELEY  
KELLY A. TURNER  
Office of General Counsel  
Illinois Commerce Commission  
160 North LaSalle Street, Suite C-800  
Chicago, IL 60601  
Phone: (312) 793-2877  
Fax: (312) 793-1556  
jcardoni@icc.illinois.gov  
jfeeley@icc.illinois.gov  
kturner@icc.illinois.gov

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*Counsel for the Staff of the  
Illinois Commerce Commission*